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Dated: February 3, 2005

Signature: Conchita Picazo-Mejia

Conchita Picazo-Mejia

Docket No.: 226272001403
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 03 2005

In re Patent Application of:
James M. ALLEN

Application No.: 09/731,941

Confirmation No.: 6840

Filed: December 6, 2000

Art Unit: 1635

For: PACKAGING CELL LINES FOR
GENERATION OF HIGH TITERS OF
RECOMBINANT AAV VECTORS

Examiner: B. Whiteman

PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR
PRIORITY UNDER 37 C.F.R. § 1.78(a)(3)MS Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant petitions under 37 C.F.R. § 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120. Applicant also submits payment of the petition fee under 37 C.F.R. 1.17(i).

Priority Claim

Applicant filed the instant application on 12/6/00. On the same day, Applicant filed a Preliminary Amendment claiming priority to certain prior applications without specifying the relationship between the PCT application and the U.S. applications to which it claimed priority. Applicant submitted an Amendment on 8/17/04 which specifically described the relationships between the PCT application and its priority applications. The Examiner stated in the Notice of

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Allowance mailed 12/2/04 that Applicant had failed to specify the relationship between these priority applications within the requisite time period.

Due to Applicant's mistake, perfection of the priority claim was delayed. The entire delay in filing the required amended priority claim, from the due date for the required claim under 37 C.F.R. § 1.78(a)(2)(ii) until the filing of a grantable petition under 37 C.F.R. § 1.78(a)(3), was unintentional.

Copendency between the PCT application and two prior U.S. applications

The Examiner stated in the Notice of Allowance mailed 12/2/04 that the instant application was not entitled to the priority date Applicant claimed because "U.S. patent applications 08/480,575 (no effective filing date because the application was never completed) and 08/350,219 (expressly abandoned on 6/22/95) were not copending when PCT/US95/15892 was filed 12/6/95." The Examiner did not contest the copendency of any other application in the priority chain.

Applicant respectfully disagrees with the Examiner, and respectfully submits that the PCT/US95/15892 was copending with U.S. Ser. No. 08/480,575, which was copending with U.S. Ser. No. 08/350,219.

Applicant respectfully notes that U.S. Ser. No. 08/350,219 (the '219 application) was filed on 12/6/94 with the specification, claims, drawings and fees. The declaration was filed 1/23/95 with the surcharge. The '219 application was abandoned on 6/22/95.

U.S. Ser. No. 08/480,575 (the '575 application) was filed on 6/7/1995, prior to the abandonment of the '219 application. The '219 application was filed with the specification, claims, drawings, and fees. Thus, the '219 application is entitled to a filing date as set forth under 37 C.F.R. § 1.53(b). Applicant received a Notice to File Missing Parts mailed 7/24/95, giving "one month from the date of [the] letter, or two months from the filing date of [the] application, whichever is later, within which to file all required items and pay any fees required

above to avoid abandonment." On 12/14/95, Applicant paid a processing and retention fee, as well as a Request for Extension of Time in the amount of \$700. A Notice of Abandonment was mailed to Applicant on 7/3/96. Since the '575 application is entitled to a filing date under 37 C.F.R. §1.53(b), the filing fee set forth under 37 C.F.R. §1.16 was paid, and the processing and retention fee set forth under 37 C.F.R. §1.21(l) were paid within the time period set forth in 37 C.F.R. §1.53(f), it is proper for PCT/US95/15892 to claim priority to the '575 application under 37 C.F.R. §1.78(a)(1)(ii) and (iii).

Applicant respectfully notes that PCT/US95/15892 filed 12/6/95 was copending with the '575 application. An Extension of Time in the amount of \$700 was paid on 12/14/95. Applicant's Transmittal does not state the period of time covered by this extension fee. However, Applicant's representative spoke with Valerie Kinard in the Office of Initial Patent Examination on January 31, 2005, who located a fee schedule from 1995. Ms. Kinard stated that, for a small entity in 1995, \$700 purchased four additional months beyond the default one month period from the mailing date of the Notice. Thus, the extension added four months to the 8/24/95 initial due date, and the application was not abandoned until 12/23/95.

In view of the above, copendency existed between PCT/US95/15892 and the '575 application, and between the '575 application and the '219 application.

Conclusion

In each application in the chain of the priority claim filed 8/17/04, the application claimed priority to a prior application which was copending with that application. In each instance the priority claim was proper. Further, Applicant has now submitted a petition to accept an unintentionally delayed claim for priority and the requisite fee to perfect the amended priority claim which Applicant submitted on 8/17/04.

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.78(a)(3) was unintentional. Therefore, upon receipt of this petition and payment of the requisite fee, Applicant respectfully requests that the Examiner grant this application the 12/6/1994 priority date.

Applicant authorizes the Commissioner to charge any additional fees under 37 C.F.R. §§ 1.17 that may be required by this petition, or to credit any overpayment, to Deposit Account No. 03-1952 referencing docket no. 226272001403. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Dated: February 3, 2005

Respectfully submitted,

By 

Jie Zhou

Registration No.: 52,395
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FROM: Jie Zhou, Registration No. 52,395**DATE:** February 3, 2005

Number of pages with cover page:	8
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Preparer of this slip has confirmed that facsimile number given is correct: 9286/exp7

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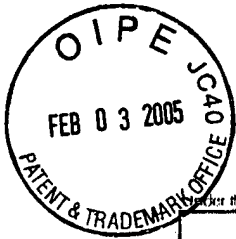
Comments:

Attorney Docket No.: 226272001403
Group Art Unit: 1635
Examiner: B. Whiteman
Application No.: 09/731,941
Filing Date: December 6, 2000
Inventor(s): James M. ALLEN
Title: PACKAGING CELL LINES FOR GENERATION OF HIGH TITERS OF RECOMBINANT
AAV VECTORS

Papers enclosed:

Transmittal (1 page)
Fee Transmittal + duplicate (2 pages)
Petition (4 pages)

pa-954556



PTO/SB/21 (00-04)
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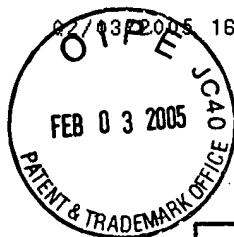
<h1>TRANSMITTAL FORM</h1> <p>(to be used for all correspondence after initial filing)</p>		Application Number	09/731,941
		Filing Date	December 6, 2000
		First Named Inventor	James M. ALLEN
		Art Unit	1635
		Examiner Name	B. Whiteman
Total Number of Pages in This Submission	7	Attorney Docket Number	226272001403

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form + duplicate (2 pages) <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition (4 pages) <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Facsimile cover sheet
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	MORRISON & FOERSTER LLP (Customer No. 25226)		
Signature			
Printed name	Jie Zhou		
Date	February 3, 2005	Reg. No.	52,395

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Dated: February 3, 2005	Signature: Conchita Picazo-Mejia

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PTO/SR/17 (12-04)
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Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/09/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). FEE TRANSMITTAL For FY 2005		Complete if Known	
<input checked="" type="checkbox"/> Applicant claiming small entity status. See 37 CFR 1.27		Application Number	09/731,941
		Filing Date	December 6, 2000
		First Named Inventor	James M. ALLEN
		Examiner Name	B. Whiteman
		Art Unit	1635
TOTAL AMOUNT OF PAYMENT (\$) 1,370.00		Attorney Docket No.	226272001403

METHOD OF PAYMENT (check all that apply)	
<input type="checkbox"/> Check <input type="checkbox"/> Credit Card <input type="checkbox"/> Money Order <input type="checkbox"/> None <input type="checkbox"/> Other (please identify): _____	
<input checked="" type="checkbox"/> Deposit Account Deposit Account Number: 03-1952 Deposit Account Name: Morrison & Foerster LLP	
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)	
<input checked="" type="checkbox"/> Charge fee(s) indicated below <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee	
<input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s) under 37 CFR 1.16 and 1.17 <input checked="" type="checkbox"/> Credit any overpayments	

FEE CALCULATION							
1. BASIC FILING, SEARCH, AND EXAMINATION FEES							
	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fees Paid (\$)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	
2. EXCESS CLAIM FEES							
							Small Entity
Fee Description							Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent							50
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent							200
Multiple dependent claims							360
							180
Total Claims		Extra Claims		Fee (\$)		Fee Paid (\$)	
30		44		0		25	
		x		25		= 0	
Indep. Claims		Extra Claims		Fee (\$)		Fee Paid (\$)	
3		3		0		100	
		x		100		= 0	
3. APPLICATION SIZE FEE							
If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).							
Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof		Fee (\$)	
100		=		150		(round up to a whole number) x 125 = 0.00	
							Fee Paid (\$)
							0.00
4. OTHER FEE(S)							
Non-English Specification. \$130 fee (no small entity discount)							
Other: 1454 Acceptance of an unintentionally delayed claim for priority							1,370.00

SUBMITTED BY			
Signature		Registration No. (Attorney/Agent)	52,395
Name (Print/Type)	Jie Zhou	Telephone	(650) 813-5922
		Date	February 3, 2005

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